



# Commerce and State Compliance and Enforcement

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**Export Control Reform:  
Compliance and Enforcement  
during Transition**

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# Export Control Reform Initiative

In August 2009, the President directed a broad-based interagency review of the U.S. export control system.

The Administration determined that fundamental reform of the current system is necessary to enhance our national security by

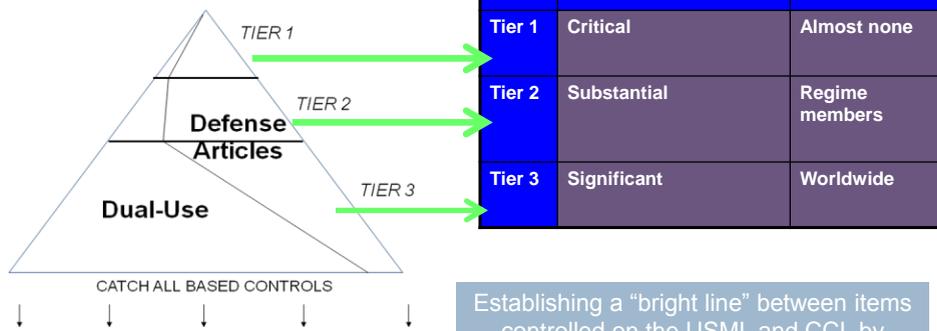
- (i) focusing resources on the threats that matter most;
- (ii) increasing interoperability with our Allies; and
- (iii) strengthening the U.S. defense industrial base by reducing incentives for foreign manufacturers to design out and avoid using U.S. parts and components.



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## ECR Prioritization Pyramid: Rebuilding the USML and CCL

Current Controlled Items and Technologies Overlaid on the Three Tiered Concept



Establishing a “bright line” between items controlled on the USML and CCL by identifying items in a “positive” manner is the key deliverable of ECR



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## Impacts of ECR: Compliance and Enforcement (C+E) Perspective

- ▶ Tens of thousands of munitions items – mostly parts and components – will be moved from the USML to the CCL
- ▶ The traditional division of C+E based on whether an item is dual-use or defense article will cease
- ▶ This has significant ramifications for customs inspectors, enforcement analysts, intelligence assets, and special agents



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## Licensing Policies Comparison

	USML "defense articles"	CCL "600 series" items
End-items	Worldwide license - Canada	Worldwide license - Canada
Identified P+C	Worldwide license - Canada	License Exception STA
Specifically/specially designed P+C	Worldwide license - Canada	("x") License Exception STA
Insignificant P+C	Worldwide license - Canada	("y") NLR except T-5 + China
De minimis	None	25% except ITAR 126.1 countries
Registration	Yes	No
Prohibitions	ITAR 126.1	ITAR 126.1
Exemptions/exceptions	limited	GOV, STA (ultimate government end-use), TSU, TMP, RPL
Temporary Import Controls	All USML items	Only items controlled for permanent import by ATF



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## Impact Analysis

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- ▶ BIS processed ~25,000 licenses in 2011
- ▶ State processed ~85,000 licenses in 2011
  
- ▶ BIS estimates that approximately 50% of State licenses will contain items moving to the 600 series
  
- ▶ Of that ~43,000, about 30% are estimated to be eligible for License Exception STA



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## Transition Issues

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- ▶ Many munitions items will have their jurisdiction changed from State to Commerce
  
- ▶ Same items can be subject to two sets of authorizations
  - ▶ DDTC “grandfathering” licenses for up to two years
  
- ▶ Commerce munitions items will be eligible for license-free treatment to allies and partners (for ultimate government end-use), or even more broadly for insignificant P+C



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## Implementing the Transition: Outreach

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- ▶ **Industry needs to be educated**
  - ▶ BIS/EA seminar program
  - ▶ OEE field office outreach to local organizations/large exporters
  
- ▶ **CBP needs to understand transition**
  - ▶ Targeting shipments will be a challenge as AES filings can involve:
    - 1) State or BIS controls for the same items
    - 2) more flexible BIS authorizations for munitions items traditionally requiring a DDTC license
  - ▶ Facilitating licit exports will require expanded BIS-CBP cooperation



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## Implementing the Transition: Validations

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### AES Filing Requirements

- ▶ All “600 series” items, regardless of value, must be reported in AES
  - ▶ This includes items controlled only for “.y” reasons
  
- ▶ “600 series” items exported under STA must specify an approved license number for the ultimate consignee
  - ▶ OEA will be screening STA transactions to ensure compliance
  
- ▶ Post-departure filings are not permitted for “600 series” items
  
- ▶ Special destination control statement



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## Implementing the Transition: Compliance and Enforcement

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### BIS Actions

- ▶ Information Triage Unit
- ▶ Transactional reviews
- ▶ End-use checks
- ▶ Closer cooperation with HSI and DDTC on investigations
  - ▶ Enhanced data sharing between BIS and DDTC is underway



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## Summary

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- ▶ Transition to 600 series will:
  - ▶ Significantly increase BIS C+E responsibilities
  - ▶ Result in 30,000 new license applications for BIS with the remaining licenses transferred from State eligible for LE STA
  - ▶ Require significant cooperation between BIS, DDTC, CBP, and HSI

### ▶ Timeline



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## End-Use Monitoring

Michael Rufe  
ECO Program Director



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### Enhanced Compliance & Enforcement: “Higher Fences”

- ▶ Targeted outreach
- ▶ **Enhanced end-use monitoring (EUM)**
- ▶ Focused evaluation of STA
  - ▶ Desk audits
  - ▶ One-time reviews
  - ▶ AES daily reviews
- ▶ Information Triage Unit (dedicated IC assets)
- ▶ Export Enforcement Coordination Center
- ▶ International cooperation



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## Enhanced End-Use Monitoring

- ▶ Increase EUM coverage worldwide to focus on 600 series items.
- ▶ Coordinate with State EUM program to maximize resources.
- ▶ Enhance Electronic Export Information (EEI) to collect additional details to improve automated screening.



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## End-Use Checks (EUCs)

- ▶ An End-Use Check (EUC) is a physical verification on location with a party of the transaction to determine if the party is a reliable recipient of U.S. goods and that items are or will be used according to the EAR.
- ▶ As part of its licensing process and preventive enforcement efforts, BIS selectively conducts end-use checks on certain dual-use exports.
  - ▶ Monitor license condition compliance.
  - ▶ Monitor compliance of non licensed transactions.
  - ▶ Confirm the end-use.
  - ▶ Determine if the company is a reliable end-user.
  - ▶ Discover more information about the parties.



Triggered Spark Gap (Controlled for Nuclear Proliferation-3A228)



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## Types of End-Use Checks (EUCs)

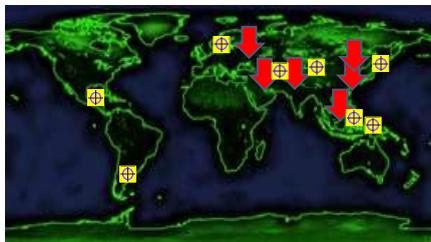
- ▶ **Pre-License Check (PLC):**  
Establishes bona fides and validates information on export license applications PRIOR to shipment.
- ▶ **License Post-Shipment Verification (PSV):**  
Strengthens assurances that all parties comply with an export license and licensing conditions to deter diversions AFTER shipment.
- ▶ **Non-License Post-Shipment Verification (PSV):**  
Measures compliance with U.S. export controls and monitors illicit diversion of U.S. controlled items.



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## Who performs End-Use Checks?

- ▶ **Export Control Officers**
  - ▶ Export control policy engagement.
  - ▶ Foreign government and local business outreach.
  - ▶ Stationed in China, Hong Kong, UAE, Russia, India, Singapore.
- ▶ **Sentinel Program Trips**
  - ▶ Checks conducted in locations by Export Enforcement personnel where no ECO is present.
  - ▶ 7 trips involving end use checks in 14 countries will be completed by the end of FY2012.
- ▶ **Foreign Commercial Service**



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## BIS EUC Program

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### ▶ FY2010

- ▶ Completed 708 EUCs (10% were PLCs – 90% were PSVs)
- ▶ Approximately 22% unfavorable
- ▶ Completed checks in 45 countries

### ▶ FY 2011

- ▶ Completed 891 EUCs (10% were PLCs – 90% were PSVs)
- ▶ Approximately 18% unfavorable
- ▶ Completed checks in 60 countries



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## Unfavorable Checks Example 1

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- ▶ U.S. Controlled (ECCN: 0A985) Stun Guns, Tasers – Licensed item.
- ▶ A PLC check is initiated.
- ▶ The company CEO will not meet at his place of business and will only provide a P.O. Box.
- ▶ After realizing a PLC is necessary to receive the items, the company cancels the order.
- ▶ Future licenses to this firm will now be subject to a PLC to confirm the ultimate end-users.



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## Unfavorable Checks Example 2

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- ▶ U.S. Controlled (ECCN: 3A981) Computerized Polygraph (“lie detector”) equipment.
- ▶ A PSV is conducted on this licensed item.
- ▶ It is revealed that the company resold the equipment to third party in completely different country which was not authorized under license conditions.



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## End-Use Monitoring Red Flags

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- ▶ Inconsistent business models
- ▶ No awareness of technology ordered
- ▶ Cancellation upon scrutiny
- ▶ Failure or high reluctance to meet
- ▶ Confrontational attitude
- ▶ Vague customer information
- ▶ Misleading or evasive behavior or answers
- ▶ **Red Flag Guidance:**
  - ▶ <http://www.bis.doc.gov/enforcement/redflags.htm>



## Consequences of Unfavorables (Part 1)

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- ▶ **Watch List:** Future license applications and export transactions will be further scrutinized.
  - ▶ License may be rejected or subject to stricter conditions
  - ▶ Exports of strategic goods may be subject to pre-shipment inspections
  
- ▶ **Unverified List:** Lists the names, countries, and addresses of foreign persons who were parties to an export transaction:
  - ▶ With respect to which BIS was unable to conduct a pre-license check or a post-shipment verification for reasons outside of the U.S. Government's control, or
  - ▶ Whose existence or authenticity BIS was unable to verify



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## Consequences of Unfavorables (Part 2)

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- ▶ **Entity List:** Lists the countries, names, addresses, license requirements, and license review policy that apply to foreign persons for which there is reasonable cause to believe that the entity has been involved, is involved, or poses a significant risk of being or becoming involved in activities that are contrary to the national security or foreign policy interests of the United States.
  - ▶ *Illustrative Example:* Preventing accomplishment of an end use check by: precluding access to; refusing to provide information about; or providing false or misleading information about parties to the transaction or the item to be checked.
  - ▶ These license requirements are in addition to any license requirements imposed on the transaction by other provisions of the Export Administration Regulations.
  
- ▶ **Investigations:** Criminal or Administrative.



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## ***Blue Lantern Program***

**Lisa Aguirre**  
**Director**  
**Office of Defense Trade Controls Compliance**  
**U.S. Department of State**

**July 2012**  
**Washington, DC**

25



## **Agenda**

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- DTCC Organization
- End-Use Monitoring
- Red Flags and Due Diligence
- Examples

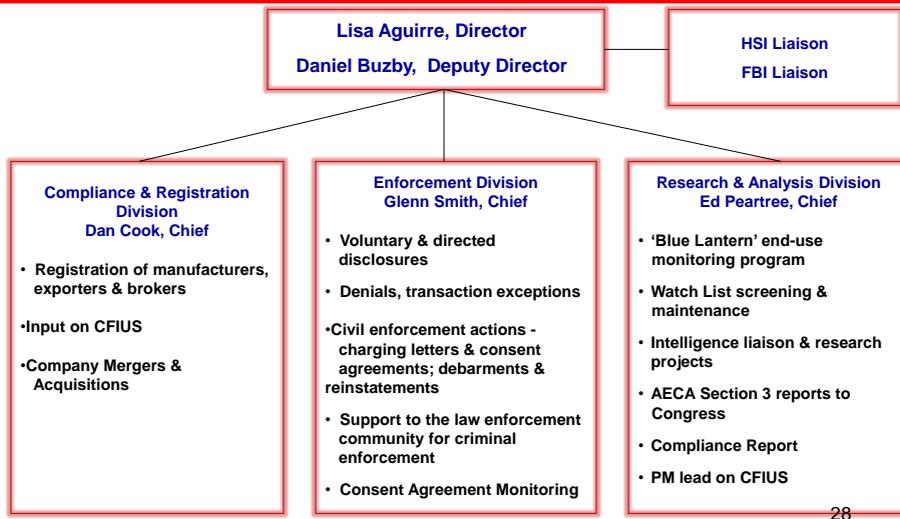
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**U.S. Department of State - Export Controls**



**Office of Defense Trade Controls Compliance  
Organizational Chart**





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## End-Use Monitoring, Red Flags, and Due Diligence

Research and Analysis Division

29



## Research and Analysis Division (RAD)

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- **Blue Lantern** end-use monitoring program
- Watch List screening & maintenance
- Intelligence liaison & research projects
- AECA Section 3 reports to Congress
- CFIUS Lead for PM Bureau  
(Committee on Foreign Investment in the U.S.)

30



## RAD's Role in Licensing

RAD vets foreign parties listed on license requests and identifies potential gray arms trafficking patterns

- Watch List persons and companies
- Unusual or suspicious parties or transactions
- Defense articles and technologies in demand by embargoed, proscribed, sanctioned parties and other undesirables
- Possible front companies, arms traffickers and gray arms networks
- Assessments of trustworthiness of foreign governments and private end-users and consignees

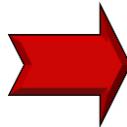
31



## Blue Lantern End-use Monitoring Program

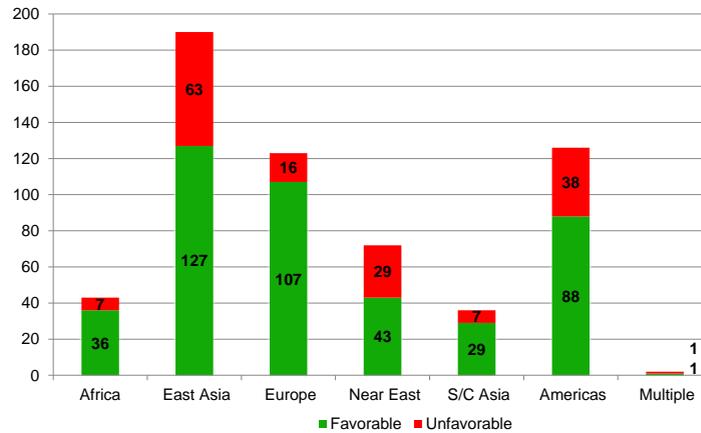
- End-use monitoring program required by Section 40A of the Arms Export Control Act (AECA), formalized 1996
- Verifies end-users, consignees, and end-uses of U.S. exports of defense articles and services
- Performed in cooperation with host governments worldwide by U.S. Embassy personnel

- Monitor transfer of sensitive hardware, technology, and services
- Build confidence between USG and defense trade partners
- Educate foreign governments and companies about U.S. export controls
- Impede "gray arms" trade





## FY 2011 Blue Lanterns Closed By Region



33



## Reasons for 'Unfavorable' Responses Number of Instance in FY 11

76	Derogatory info / unreliable recipient of USML
43	Unable to confirm order / receipt of goods
34	Diversion / retransfer / re-export
30	Unauthorized foreign party involved in transaction
12	Unauthorized brokering
12	Inability to confirm existence of foreign party
7	Refusal to cooperate
6	Lack of secure storage facilities
5	Unauthorized stockpiling

34



## Red Flags and Due Diligence

- Vague or unintelligible end-use statement
- Reluctance/evasiveness to provide end-use explanation and/or documentation
- Unfamiliar customer, lack of available information
- Unfamiliarity with hardware/technology and its use
- Hardware inconsistent with stated end-use
- Private/non-government end-user
- Chain-of-custody unclear
- Unusual routing
- End-user appears to be a reseller or integrator



*If something about the transaction doesn't make sense, ask questions and fill in the blanks.*

35



## Due Diligence Continued

- **Obtain Complete End-User/Use Certification**
  - End-User
  - End-Use (include platform, i.e. aircraft type)
  - Intermediate Consignees
    - Customer
    - Customer's customer (when applicable)
    - Freight Forwarder
    - Maintenance and Repair Providers
    - Any company that will take possession of the item
- **Ask for Additional Supporting Documentation**
  - Non-Transfer and Use Certificate (DSP-83)
  - Contract
  - Purchase Order
  - End-Use Statement on Government Letterhead
- **Request Contact Information**
  - Specific name and all available contact information for end-user and intermediate consignees.
- **Conduct Basic Research on Foreign Parties**
  - Visit websites and learn about their line of business

36



## Example 1: Phony End-User and Consignee

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### **Export License Application**

- Commodity/End-Use: Bell 206 parts
- End-user: Unfamiliar European Organization
- Foreign consignee: Unfamiliar European Company
- No documentation from end-user
- Procurement inconsistent with end-user's needs
- Foreign consignee's website described history of work on USML, however it had never previously appeared on a DDTTC license.

### **Findings**

- End-use statement was falsified by foreign consignee
- Foreign consignee admitted it was front company

### **Lessons**

- Conduct basic inquiry on unfamiliar parties and their line of business
- Confirm that commodity matches end-user's line of business

37



## Example 2: Reseller Listed as the End-User

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### **Export License Application**

- Commodity/End-Use: Large quantity of NVDs
- End-user: European Reseller
- End-use: Government security operations
- Request for hardware not normally retailed by the company
- Large number of NVDs for a private end-user

### **Findings**

- End-use statement falsified
- Named end-user denied placing the order with the U.S. exporter

### **Lessons**

- Conduct basic inquiry on unfamiliar parties and their line of business
- Confirm that commodity matches end-user's line of business

38



## Example 3: Concealed End-User

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### Export License Application

- Commodity: Aircraft Batteries
- End-user: Southeast Asian Government
- Foreign Consignee: Southeast Asian Company
- Conflicting end-use statements provided in license application package (2 different aircraft platforms)
- No signature on end-user documentation (name typed out)
- Same PO number used on end-user's and FC's purchase order

### Findings

- Actual end-user and end-use were different from license application

### Lesson

- Be wary of inconsistent, sloppy documentation

39



## Summary

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- Ensure all parties are identified, end-use is clear and logical, and that all available supporting documentation is provided
- Conduct basic due diligence on unfamiliar parties
- Information discovered during the course of a Blue Lantern may result in a Directed Disclosure
- Perform thorough due diligence up front and avoid violations

40



## Leads, Tips, Questions

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### *Enforcement/Compliance*

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### *End-Use Monitoring*

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41



## General Questions

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- Response Team Telephone Number:
  - [202.663.1282](tel:202.663.1282)
- Response Team E-mail:
  - [DDTCResponseTeam@state.gov](mailto:DDTCResponseTeam@state.gov)

42

**Thank You**

**Questions?**



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